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To: Docket Clerk, US DOT Dockets
From: George Braun
Subject: FHWA Docket No. FHWA – 98 – 3656 – 13

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*Con-Surve* is a consulting company specializing in operating and technical aspects of intermodal transportation. Our clients are primarily steamship lines and leasing companies.

The attached article was written for a British trade publication. It expresses our opinions regarding the above-mentioned docket and why we believe the petition for rulemaking should be denied.

Thank you for your attention.

George Braun
President

OVER-REGULATING ?

*In this article, - George Braun of Con-Surve, looks at the issue of Federal regulation of container chassis inspection, maintenance and repair in the USA. While focused primarily the intermodal container chassis industry, his comments apply to the piggyback trailer industry as well. The opinions expressed are his own, and do not necessarily reflect the opinions of World Cargo News.*

BACKGROUND

Container chassis are big business in the United States - difficult for non-Americans to understand. In most other countries, truckers own the chassis that pickup and deliver containers for shippers and consignees. Not so in the USA. There are over 500,000 container chassis owned, financed, or leased by steamship line carriers, or to a lesser extent, by railroads. These ocean / rail carriers in turn make chassis available to their truckers (motor carriers) who actually operate the equipment. Truckers complete the pickup and delivery portion of the service provided by their ocean / rail carrier customers. Chassis are generally provided free of charge to truckers, but presumably, fees paid to truckers adjust for the use of the chassis equipment.

Leased chassis – chassis owned by leasing companies - represent approximately 40% of the USA fleet. Leases can be long term – a few years, or as short as a one-day trip lease. Leasing companies do not directly operate their chassis, but rather lease the equipment on a contractual basis to their carrier customers. There are broadly two types of lessors: operating lessors - those that provide short and term leases, pick-up, drop-offs, master leases, etc. (with networks of depots and vendor support); and financial lessors - companies that provide the long-term lease capital, but do not as a rule have resources and facilities to actually handle and process the equipment.

Although truckers (motor carriers) are the end users of chassis on behalf of their steamship line or railroad customers. However, leasing companies seldom deal directly with truckers. The reasons are twofold: chassis are usually managed by steamship lines and railroads who do business directly with their truckers; there are many truckers, and far too many credit checks and receivables to reasonably allow leasing companies to lease directly. The majority of the leased chassis fleet is owned by operating leasing companies, while some long-term leased equipment is owned by banks and financial institutions. The ocean / rail carrier's choice of leasing supplier depends on both financial and operating needs deemed most flexible.

THE NEED TO TAKE CARE

Container chassis are semi-trailers, considered "commercial motor vehicles" under Federal law. When it comes to inspection and maintenance of container chassis, leasing companies rely heavily on their customers and truckers' reports to keep the equipment safe, roadworthy, and legally compliant. The operating leasing industry (through the Institute of international Container Lessors (IICL)) has traditionally taken a strong,

voluntary leadership role in promulgating inspection and maintenance criteria for their container chassis. Long before Federal annual inspection legislation took effect, IICL had demanding inspection criteria in use for on and off-hire inspections. The IICL's leadership role is easy to understand. Leasing companies rely on their equipment to generate revenue. Detailed inspection and maintenance programs are likely to enhance safe operation and to extend useful equipment life. The leasing community has strong commercial interests in assuring safe equipment and maximizing useful life of its revenue-producing equipment. Without leasable equipment, there is no revenue. Damaged, unreliable, out-of-service container chassis are simply not acceptable in a very competitive business.

When the Federal Highway Administration (FHWA) first mandated that motor carriers conduct annual commercial motor vehicle inspections, the IICL voluntarily published its own guidelines for the application of the Federal inspection criteria specifically to container chassis. This adaptation of the original IICL chassis inspection manual allowed the inspector to follow a systematic procedure designed for chassis in performing annual inspections. While not under FHWA jurisdiction, IICL demonstrated its desire to support and cooperate with the program.

When chassis are under the control of an operating leasing company, such as in a depot, the lessor arranges with the depot for completion of the annual chassis inspection, often in conjunction with a scheduled maintenance program. While legal burden for completion of the inspection rests with the motor carrier operating the chassis, the lessors' arrangement is an expedient that would otherwise commercially and logistically burden their customers. The annual inspections are reinforced in the depot environment by inbound and outbound inspections usually performed under IICL guidelines. However, because leasing companies do not actually operate chassis, they seldom have convenient access to their own equipment. Only periodically and infrequently are some chassis cycled through leasing company controlled, or third party depots. If the chassis are not available to the lessor at the due date of an annual inspection, the lessee or its motor carrier must perform that task. This makes the motor carrier's duty of carefully verifying equipment condition all the more important.

Leasing companies know only to which ocean / rail customer a chassis is on hire. Unknown are the trucker-operator, location, and the condition under which the chassis is being operated.

Once chassis leave the confines of a depot or terminal, there is no way for anyone except the driver to know if damage and defects have occurred. Therefore, once a chassis leaves the gate, the trucker, and only the trucker is responsible for the condition. If the trucker is selected for random roadside inspection as allowed by FHWA, virtually all the criteria included under the annual FHWA inspection must be met for the equipment to pass. In other words, at any time during the year, a container chassis is expected to comply (with

minor exceptions) to the same criteria with which it complied under the annual FHWA inspection.

IT'S ONLY A DECAL

Caught up in the need to make as many pickups and deliveries as possible, too many truckers have taken the presence of a 'valid' FHWA inspection decal to mean the leased equipment they are operating requires no further check on their part. This is both an incorrect assumption and a dereliction of duty. The valid FHWA decal only testifies that on a particular day of the year, the chassis passed annual inspection criteria – it is a snapshot of the chassis condition on that day. Condition can and does change under use. At a roadside inspection, the presence of a valid FHWA decal means only that the driver will not be cited for operating with an invalid decal. Although a chassis has undergone a valid annual FHWA inspection, truckers operating the chassis must carry out the Federally mandated daily inspection and maintenance to assure safe operation and compliance. This is more detailed than kicking the tires. It should take about 10 minutes of a conscientious driver's time.

Again, the presence of the decal has no bearing on the condition of the vehicle. Federal rules clearly place the responsibility of equipment condition on the motor carrier; therefore, before leaving the depot or terminal, valid decal notwithstanding, the chassis must be carefully inspected. The driver must take a proactive role in this inspection.

At many pools and terminals, drivers assume the gate inspector will perform the safety check. Gate inspections are often cursory, designed to verify unit numbers and bills of lading. They are not substitutes for a comprehensive driver inspection. The driver's role in pre-trip inspection and safety check cannot be delegated.

THE SOLUTION, OR IS IT THE PROBLEM?

This brings us to a current issue: proposed revision of the Section 396 requirements of the Federal Motor Carrier Safety Regulations (vehicle inspection, repair, and maintenance). Motor carriers (who have sole responsibility for ensuring roadworthiness of intermodal equipment) want the FHWA to require parties tendering the equipment – leasing companies, ocean carriers, and railroads – to ensure mechanical fitness. Rationale for this proposition is motor carriers' contention that they have no opportunity to perform an adequate inspection and safety check. This stipulation both suggests and requires that ocean carriers, railroads, leasing companies, terminal operators, and depots be under FHWA jurisdiction.

Another proposed change is that parties tendering equipment must provide the motor carrier with adequate time and facilities to make a full inspection and necessary repairs prior to taking the equipment on the road.

A third major proposed revision is that agents of the FHWA would be allowed to inspect equipment at terminals and pools where providers make their equipment available to truckers.

Ownership and vested equipment interests are key to understanding these issues. When engaged in interrnodal transportation, motor carriers often operate vehicles that are owned by leasing companies, ocean carriers, or rail carriers. The trucker is operating equipment belonging to other parties. Adding to the third party ownership interests is the growing popularity of equipment pools in port cities and double-stack rail terminals. Often third party chassis are picked up and dropped off by many different truckers in a short period. It is precisely because of rapid turnover that the driver must take time before leaving the confines of a yard or terminal, to be sure the equipment – chassis or trailer – whether owned or leased - is safe and roadworthy. Upon return of equipment, the driver is similarly expected to report in detail if defects exist. The petitioning carriers believe such pre and post inspections are impractical - time consuming and costly in delays.

JURISDICTION

The Federal Highway Administration under the Department of Transportation has jurisdiction over motor carriers, not leasing companies, financial institutions, terminals, or depots. The Congress of the United States ultimately grants this authority. 'Motor carriers' move goods and property across state lines on the highways. Leasing companies and the other equipment providers do not move freight. According to regulatory guidance published by the FHWA, irrespective of whether equipment is owned or leased, the motor carrier is solely responsible for ensuring that vehicles under its control are in safe operating condition and that defects have been corrected. To extend FHWA's authority to cover other than motor carriers would presumably require an act of Congress, and not just a unilateral action.

WHY NOT?

Setting aside this most critical issue of whether FHWA's jurisdiction allows their control over non-motor carriers, there are other considerations in forming an opinion about the proposed extension of equipment condition to the equipment providers:

- Is there any statistical evidence to suggest that leased chassis or terminal-tendered chassis fail roadside inspections at a higher rate than trucker-owned equipment? If yes, what is the nature of the defects, and could they have been corrected by a proper driver inspection? Are there proportionately more accidents and injuries (per mile, or per movement) for chassis than for other equipment?
- If such chassis defect evidence exists, is it time related, i.e., are chassis found to have defects immediately after having left a depot, terminal, or railhead or is there a time interval of usage before defects are noted? How does the roadside inspector know when the defect was caused? Is there a time limit before responsibility shifts from the

provider (leasing company or terminal) to the user (trucker)? If so, is the time limit one day, one week, one month?

- If defects found in roadside inspections are attributable to the chassis provider, does it follow that defects found at a terminal / pool facility (under proposed changes) are the responsibility of the last trucker?
- Do different defects found at a roadside inspection allow for different time limits in determining responsibility i.e., are brakes a provider responsibility for one month, but lights a provider responsibility for one day?
- How often are the truckers' power units found defective compared to the chassis? Will the trucker always be responsible for the power unit (tractor), but only sometimes responsible for the chassis? Suppose the power unit is leased?
- If there is a chassis defect problem, could it be addressed by a more frequent (say, twice per year) formal inspection coupled with a more intensive driver pre-trip inspection? Would better training of drivers in inspection criteria help? Could mandatory areas for equipment inspection within terminals be of value?
- What about addressing the trip-rate compensation system that discourage time spent in equipment selection and inspection? If there is one underlying weakness in the current system, is it the truckers' need to make as many revenue-producing moves as possible within a day's work?
- Could simple enforcement of the existing regulations, specifically of comprehensive driver pre-trip inspections be all that is required to improve the situation?
- Does the fact that drivers do not want to perform proper pre-trip inspections justify transferring the responsibility to others?
- In general, if there is in fact a problem are there other possible solutions?

Questioning practicality of proposed modifications to Federal Motor Carrier Safety Regulations is limited only by imagination. Let us go deeper, looking for other arguments why the petition for change should be denied.

There is no evidence of the leasing community's presenting substantial numbers of damaged or defective equipment to the motor truck industry. To the contrary, the IICL has as previously reported, traditionally been a proponent of safety and maintenance programs for its equipment. (In addition to recommending inspection criteria, IICL conducts annual certification examinations allowing field inspectors the opportunity to demonstrate proficiency in chassis care. Well over 400 individuals have passed these examinations.)

Another very good reason for rejected proposed changes to the Federal regulations is that 'joint responsibility' means 'no responsibility.' If you think that I am responsible for carrying out a task, and I think that you are responsible, we both know what will happen – neither of us gets the job done. If drivers are of the opinion that the equipment providers are totally responsible for ensuring condition, their pre-trip inspections will be

less comprehensive and more cursory. Sharing or transferring responsibility for safety of a chassis from the party in control of the chassis (motor carrier) to a party that does not operate the equipment is dangerous and counterproductive. This cure could be worse than the disease.

The time to inspect, the time to correct, the time to accept or reject is before the unit leaves the confines of the depot or ocean / rail carrier terminal or chassis pool. Within those confines, the equipment provider often employs mobile mechanics. These technicians perform annual FHWA inspections. They travel through the yards looking for chassis with reported defects, or randomly inspecting and repairing as necessary. In many cases, these mechanics have 'Carte blanche' to repair up to specified dollar limits. Terminals and pools also provide a 'roadability' service, performing driver-requested repairs before the chassis leaves the premises. In this way, the tendering parties do ensure the roadworthiness of intermodal equipment while keeping the responsibility where it belongs. Note too that no motor carrier, having performed a proper equipment inspection, is required to accept a defective piece of equipment.

Responsibility for equipment condition shifts to the motor carrier when the chassis leaves the gate. There should be no question of responsibility for condition or civil or criminal liability after leaving the depot / terminal / pool facility. Regulations currently require detailed pre-trip inspections by drivers and detailed equipment reports at the end of each workday by drivers. How else can a driver attest to such equipment condition except by spending 10 minutes checking out the equipment he is driving? It is unthinkable that a driver would simply hook up to a chassis and drive away without performing a reasonably detailed inspection. Such actions put the driver himself as well as the driving public at risk. This responsibility cannot be shared or delegated. To do so is to assure that it is eliminated completely.

Upon returning a piece of inter-modal equipment to a leasing company or terminal or pool, a driver is legally and contractually required to report all defects. This responsibility is often overlooked because it sometimes implies that the driver must pay for defects that he caused. If a poor or hasty pre-trip inspection was performed, the problem is exacerbated. The system depends on defect notification. Then, repairs can be corrected before the chassis returns to road service. Absent such notification, the equipment provider might be able to inspect the chassis via the mobile mechanics; but who better to report condition than the person actually operating the equipment? Certainly in those terminals where hundreds of inbound and outbound moves occur daily, it is impractical for anyone other than the trucker to be responsible for reporting defects.

Business contracts and interchange agreements between equipment providers and operators usually provide for undertaking inspection and maintenance of equipment. The issues of expressed and implied equipment condition as well as indemnification are also

typically addressed. These contracts are voluntary, and based on longstanding and traditional business practices in the inter-modal industry. Such arrangements have worked for years and do not need government intervention or interference absent evidence of a safety crisis.

The issue of cost has not yet been addressed because cost should not be a factor in achieving safety. However, we can discuss operating costs because there is no hard evidence that safety is being compromised. If there were such evidence, it is likely that conscientious driver behavior would solve the problem. Imagine pool and terminal facilities where inspectors are hired and trained to inspect chassis only. Each unit would need to be supplied with air and electric for complete checkout as is now the case when a driver is readying to pull the chassis. There would be hundreds of inspectors and hundreds of pieces of equipment chargeable ultimately to shippers and consignees. The throughput and overcrowding would result in delays far beyond those required when a driver performs his own diligent 10 minute pre-trip or end-of-day inspection.

NEW OPERATING WAYS

Certainly, the proliferation of equipment pools serving double stack railheads and container port terminals is a phenomenon that did not exist when IICL guidelines and FHWA regulations were first promulgated. Gate inspections at many terminals and pools today validate unit numbers and paperwork with only a very general walkaround for safety check. Some terminals are adopting video cameras and automatic equipment identification as means of expediting throughput. The percentage of container chassis moves that are local pickup and delivery as opposed to line haul has increased dramatically. This fact has introduced large numbers of small truckers operating on limited resources and paid by the trip. The more trips the more fees. Time spent selecting and inspecting equipment is not compensated. It is both convenient and expedient for a driver to assume that the previous driver or the pool operator or the gate inspector has done your work for you.

THE WAY WE WERE

Chassis pools are an expedient to all parties. Trains and vessels are turned around quickly. Unnecessary container lifts and transfers are reduced. Paperwork and administration are minimized. When considering the 'delay' that a proper equipment inspection will cause truckers in a chassis pool environment, remember the efficiencies gained by the pool concept. We forget life before chassis pools. Truckers would enter rail yards or port terminals with their own chassis. After producing paperwork, the trucker would wait while a container was pulled out on a 'yard' chassis. Then the further wait while the container was lifted off the yard chassis and transferred to the trucker's chassis. Paperwork and communication documented each move. Traffic jams were everywhere. Interestingly, there was no guarantee that the driver's own chassis was in fact properly inspected. A IO-minute pre-trip of a chassis pales by comparison with the time-consuming logistics of a 'non-pool' operation.

DIFFERENT OR BETTER?

Does this mean there is no room for improvement? That is seldom the case. Whether or not statistics and data will suggest that lessors and other 'provided' chassis are more prone to defects, operating practices can always be refined. Opportunities exist within the current regulations, but need to be integrated into today's changing inter-modal climate. The present system is fundamentally sound. Lessors through their depots inspect and maintain chassis when they have the opportunity. Terminal and pool operators employ mobile mechanics and offer roadability checks; but motor carriers are both the last line of defense and the best source of information about chassis defects. If truckers are denied the time, resources, or opportunity to perform a comprehensive inspection, that situation should be changed.

ALTERNATIVES

Special and convenient areas in terminals and pools can be designated for trucker inspection of equipment. The interchange document can include wording that the driver has thoroughly inspected the equipment and that it is to his satisfaction. Perhaps a ratio of mechanics to chassis could be established by joint working committees using the facility. Drivers' testing qualifications should include demonstrating competence in the area of equipment inspection. Loopholes in Commercial Drivers' License can be closed in the interest of licensing more professional drivers. Pricing of pool equipment could include allowance for more extensive and detailed joint equipment inspections by equipment providers and drivers. Certainly, the emphasis on fast turnaround and trip rates is counterproductive to inspection. Commercial agreements between truckers and equipment providers could call for self audits of equipment condition.

These and other voluntary possibilities should, if warranted, be explored before Federal regulations are changed. The fact that drivers are not compensated and not motivated for time inspecting equipment is not sufficient cause to change the law.

IN SUMMARY

The approach to this regulation issue is straightforward:

- Is there a documented problem with the roadability of intermodal equipment?
- Can the issue of roadability be addressed by strict adherence to the current regulations, i.e., enforcing a proper pre-trip inspection and other rules?
- Are there voluntary operating adjustments necessary within the existing system that would better allow the participants to protect equipment condition?

If 'solutions' are necessary, the preferred method is via voluntary working groups of responsible trade associations and business partners reaching commercial agreement. The subject of jurisdiction is critical to this issue. Government intervention seldom achieves the desired results without excessive costs and bureaucracy payable by industry and passed down to the consumer. This is a clear case of "the cure being worse than the disease." Let industry jointly decide if there is a problem. Let industry jointly decide

how to solve it. Above all, be wary of solutions in search of problems – their costs are disproportionate to their benefits.